In any event, I do not see how these additional documents, even if available, are relevant to the issues raised in this action, ie whether the alleged words were defamatory of the plaintiffs and if so, whether the defence of fair comment is available to the defendants. The press releases were issued weeks after the objectionable letter was published. Documents that came into existence well after the alleged libel had been published can have no bearing where the plea is fair comment: see *Cohen* v *Daily Telegraph*.[7]

Moreover, I would point out that Mr Milmo's main contention for an order is that the basis upon which the plaintiffs prepared the list of documents was palpably wrong. With respect, I do not share that view. This is because I see the aim of this application as no different from the application for interrogatories. This is really a second attempt by the first and third defendants to raid the cupboards of the plaintiffs to see whether they could find anything useful there for their case. This is no less a 'fishing' expedition and for the reasons dealt with above on interrogatories, I think this is also a ground for which this court would refuse the application.

In the result, I would allow the two appeals by the plaintiffs and set aside the two orders made by the assistant registrar. The appeal of the first and third defendants is dismissed. The costs of the hearing of the two applications before the assistant registrar as well as the hearing of the appeals before me shall be the plaintiffs' in any event.

Order accordingly.

Solicitors: *Shook Lin & Bok*; *Arthur Loke & Partners*.

Reported by *Terence Tan Bian Chye*

Lim Tian Seng v Chong Lee King

HIGH COURT (SINGAPORE) – APPEAL IN DCA 69/87
TAN TEOW YEOW JC
17 APRIL 1989

Civil Procedure – Appeal from district court – Finding of fact

Tort – Negligence – Motor accident – Whether negligence proved

The appellant, while riding a motorcycle, was involved in a collision with a car driven by the respondent. The appellant suffered personal injuries and sued the respondent for damages. The case was heard before a district judge who dismissed the appellant's claim with costs. On appeal, the appellant submitted that the district judge should have accepted the appellant's evidence that the respondent's car had swerved into his path and thus caused the accident.

Held, dismissing the appeal:

(1) Whether the respondent had swerved into the path of the appellant was purely a question of fact.

(2) The sketch plan drawn by the police after the accident offered little help.

(3) From the evidence, the appellant had failed to prove any negligence on the part of the respondent. The appeal was therefore dismissed with costs

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 26 of 1989.]

HE Cashin for the appellant/plaintiff.
Peter Madhavan for the respondent/defendant.

Cur Adv Vult

Tan Teow Yeow JC: On 24 July 1985 in the afternoon the appellant was riding his motorcycle along Sembawang Road towards the direction of the city when he lost control of his motorcycle, fell and sustained personal injuries. He said he was travelling in the extreme left lane of the road when a motorcar which was earlier travelling on his right suddenly swerved into his path. He had no choice but to apply the brakes and thus lost control of his motorcycle. He said that when the motorcar swerved into his path the distance between them was about three metres. In his cross-examination and re-examination he also admitted that the road was sandy and the condition was not very good.

The respondent, on the other hand, testified in the court below that during that relevant afternoon he was also travelling along the same direction in his motorcar along Sembawang Road. When approaching the junction of Sembawang and Jalan Mata Ayer, he saw two vehicles in front of him signalling to turn right. He turned on his signal to filter into the inner lane. He also looked into his rear view mirror and saw no vehicles behind him. After passing the junction of Jalan Mata Ayer he looked again at his rear view mirror and noticed that one motorcyclist had fallen. He then stopped his motorcar to render assistance. He also called the ambulance. The two vehicles had not come into contact with each other.

The learned district judge in the court below having heard the evidence found that the respondent's motorcar was some distance away from the appellant's motorcycle when the appellant lost control of his motorcycle. He also found that the respondent did not cause the appellant to apply the brakes of his motorcycle. He dismissed the appellant's claim with costs.

The appellant appealed before me. The only question of fact in this appeal is whether the respondent had swerved into the path of the appellant at a short distance of three metres. Counsel for the appellant has argued that the learned district judge should have accepted the evidence of the appellant that the respondent's motorcar

must have swerved into the path of the appellant which caused him to lose control of his motorcycle. This is purely a question of fact. The sketch plan drawn up by the police after the accident offers little help to the case. The scratch mark caused by the motorcycle on the road is evidence of a skid which does not go to show whether the vehicle that swerved into the appellant's path was that of the respondent's neither does it throw any light on the distance between the two vehicles at the point of time just before the appellant lost control of his motorcycle.

From the evidence, I am of the view that the appellant has failed to prove any negligence on the part of the respondent. I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Madhavan, Louis & Partners.*

Reported by *Terence Tan Bian Chye*

Tan Boon Liat & Co (S) Pte Ltd v Attorney General of Singapore

HIGH COURT (SINGAPORE) – SUIT NO 2534 OF 1979
CHUA J
4 APRIL 1989

Land Law – Planning approval – Construction of – Whether sale of office and store units separate or as part of factories only – Planning Act (Cap 279, 1970 Ed), s 9(1), (3) & (5) – Local Government (Advertisement) Regulations 1966

The plaintiffs were the owners of a large piece of land for which they received permission ('the 1971 permission') from the Building Control Division ('BCD') to develop into a flatted factory with offices and stores ('the building'). The plaintiffs completed the building and obtained an advertisement permit from the BCD to advertise the sale of units in the building as 'factory, warehouses and offices, etc'. The sale of the units started soon after. The BCD wrote to the plaintiffs, 'reminding' them that the 1971 permission only allowed the plaintiffs to sell the office and store units of the building only as part of flatted factories. The plaintiffs disagreed with this construction of the said permission and sought a declaration that they were entitled to dispose of the units separately according to the terms of the 1971 permission.

Held, granting the declaration sought:

(1) The 1971 permission should not be looked at in isolation but it should be looked at together with three prior planning permissions.

(2) The explanatory notes to the last of these three permissions provided for separate numbers of vehicle parks for offices, stores and factories. This showed that the BCD knew that the building was designed to facilitate the use of factories, stores and offices separately.

(3) The BCD's restrictions on the sale of offices and stores separately were only imposed much later.

(4) The licence granted to the plaintiffs under the Local Government (Advertisement) Regulations 1966 by the BCD licensed the plaintiffs to advertise the sale of the units in the building separately. The plaintiffs had acted on their representation and had sold many of the units purely for office or store use.

(5) The Planning Act does not give the BCD authority to impose conditions after planning approval has been granted.

Legislation referred to
Planning Act (Cap 279, 1970 Ed) s 9(1), (3), (5)
Local Government (Advertisement) Regulations 1966

Ronald Lee (*Robert Wee* with him) for the plaintiffs.
Ter Kim Cheu (*Soh Tze Bian* with him) for the defendant.

Cur Adv Vult

Chua J: The plaintiffs are and were at all material times the legal owners of a large piece of land of approximately 173,960 sq ft at Outram Road known as lots 422, 57[5], 7, 11, 12, 14, 15 mukim I. At all material times, the land was zoned as general industry under the Master Plan.

On 22 December 1971, the plaintiffs obtained the written permission of the Chief Planner as competent authority, under s 9(1) of the Planning Act (Cap 279) ('the Planning Act'), for the 'industrial development' of their said land into a block of 15-storey flatted factory with offices and stores ('the building') ('the 1971 written permission').

The 1971 written permission is in the following terms:

> The competent authority under s 9(1) of The Planning Act (Cap 279, 1970) grants:
> Written permission for the use of the site edged red, for industrial development comprising the erection of the following:
>
> (i) a block of 15-storey flatted factory with offices and stores on the site coloured orange:
> (ii) a canteen building on the site coloured pink;
> (iii) a dust bin centre on the site coloured blue; and
> (iv) an electric substation on the site coloured yellow, with provision for driveways, car parks and loading/unloading bays and tree planting, on lots 422, 57[5], 7, 11, 12, 14, 15 mukim I at Outram Road, as depicted on plan (XX) in DC 116/40 subject to the following conditions:
>
> (a) The total floor area of the building for assessment of plot ratio purposes shall not exceed a plot ratio of 3 or 574,860 sq ft.
>
> (b) The driveway and car parks, loading and unloading bays as indicated on the plan shall be constructed to the satisfaction of the competent authority upon completion of the building.
>
> (c) Trees of a suitable specie shall be planted in the positions as indicated on the plan to the satisfaction of the competent authority.